



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2015-0656; FRL- 9967-55-Region 3]

Approval and Promulgation of Air Quality Implementation Plans; Delaware; Reasonably Available Control Technology (RACT) State Implementation Plan (SIP) Under the 2008 Ozone National Ambient Air Quality Standard (NAAQS)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a state implementation plan (SIP) revision submitted by the State of Delaware. This revision pertains to reasonably available control technology (RACT) requirements under the 2008 8-hour ozone national ambient air quality standard (NAAQS). Delaware's submittal for RACT for the 2008 ozone NAAQS includes (1) certification that, for certain categories of sources, RACT controls approved by EPA into Delaware's SIP for previous ozone NAAQS are based on currently available technically and economically feasible controls and continue to represent RACT for 2008 8-hour ozone NAAQS implementation purposes; (2) the adoption of new or more stringent regulations or controls that represent RACT control levels for certain other categories of sources; and (3) a negative declaration that certain categories of sources do not exist in Delaware. This action is being taken under the Clean Air Act (CAA).

DATES: Written comments must be received on or before **[insert date 30 days after date of publication in the Federal Register]**.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA-R03-OAR-2015-0656 at <http://www.regulations.gov>, or via email to stahl.cynthia@epa.gov. For comments

submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the “For Further Information Contact” section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Leslie Jones Doherty, (215) 814-3409, or by e-mail at jones.leslie@epa.gov.

SUPPLEMENTARY INFORMATION: On May 4, 2015, the Delaware Department of Natural Resources and Environmental Control (DNREC) submitted a revision to its SIP that addresses the requirements of RACT under the 2008 8-hour ozone NAAQS.

I. Background

A. General

Ozone is formed in the atmosphere by photochemical reactions between volatile organic compounds (VOC) and oxides of nitrogen (NO_x) in the presence of sunlight. In order to reduce these ozone concentrations, the CAA requires control of VOC and NO_x emission sources to

achieve emission reductions in moderate or more serious nonattainment areas. Among effective control measures, RACT controls significantly reduce VOC and NO_x emissions from major stationary sources.

RACT is defined as the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility.¹ Section 172(c)(1) of the CAA provides that SIPs for nonattainment areas must include reasonably available control measures (RACM) for attainment of the NAAQS, including emissions reductions from existing sources through adoption of RACT. A major source in a nonattainment area is defined as any stationary source that emits or has the potential to emit NO_x or VOC emissions above a certain applicability threshold that is based on the ozone nonattainment classification of the area: Marginal, Moderate, Serious, or Severe. *See* “major stationary source” in CAA sections 182(b), 184(b) and 302. Sections 182(b)(2) and 182(f)(1) of the CAA require states with moderate (or worse) ozone nonattainment areas to implement RACT controls on all stationary sources and source categories covered by a control technique guideline (CTG) document issued by EPA and on all major sources of VOC and NO_x emissions located in the area. EPA’s CTGs establish presumptive RACT control requirements for various VOC source categories. The CTGs typically identify a particular control level that EPA recommends as being RACT. In some cases, EPA has issued Alternative Control Techniques guidelines (ACTs) primarily for NO_x source categories, which in contrast to the CTGs, only present a range for possible control options but do not identify any particular option as the presumptive norm for what is RACT. Section 183(c) of the CAA requires EPA to revise

¹ *See* December 9, 1976 memorandum from Roger Strelow, Assistant Administrator for Air and Waste Management, to Regional Administrators, “Guidance for Determining Acceptability of SIP Regulations in Non-Attainment Areas.” *see also* 44 FR 53761, 53762 (September 17, 1979).

and update CTGs and ACTs as the Administrator determines necessary. EPA issued eleven new CTGs from 2006 through 2008 for a total of 44 CTGs issued since November 1990. States are required to implement RACT for the source categories covered by CTGs through the SIP.

Pursuant to section 184(b) of the CAA, the same requirements for sources of NO_x and VOC apply to any areas in an ozone transport region (OTR). A single OTR has been established under section 184(a), comprising all or part of 12 eastern states and the District of Columbia². The entire State of Delaware is part of the OTR and, therefore, must comply with the RACT requirements in section 184(b)(1)(B) and (2) of the CAA. Specifically, section 184(b)(1)(B) requires the implementation of RACT in OTR states with respect to all sources of VOC covered by a CTG. Additionally, section 184(b)(2) states that any stationary source with the potential to emit 50 tpy of VOC emission shall be considered a major source and requires the implementation of major stationary source requirements in the OTR states as if the area were a moderate nonattainment area. A major source in a nonattainment area is defined as any stationary source that emits or has the potential to emit NO_x or VOC emissions above a certain applicability threshold that is based on the ozone nonattainment classification of the area: Marginal, Moderate, Serious, or Severe. *See* “major stationary source” in CAA sections 182(b) and 184(b).

B. Delaware History

Delaware has been subject to the CAA RACT requirements as a result of previous ozone designations. Under the 1-hour ozone NAAQS, Kent and New Castle Counties in Delaware were designated part of the Philadelphia-Wilmington-Trenton, PA-NJ-DE-MD severe ozone nonattainment area, and Sussex County was designated as a marginal ozone nonattainment area.

² Only a portion of the Commonwealth of Virginia is included in the OTR.

Since the entire State of Delaware has been part of the OTR, RACT was implemented in Sussex County as a moderate nonattainment area. Therefore, all three counties were subject to RACT requirements under the 1-hour ozone standard. Since the early 1990's, Delaware implemented numerous RACT controls throughout the State to meet the CAA RACT requirements under the 1-hour and the 1997 8-hour ozone standards.

Under the 1997 8-hour ozone NAAQS, the entire State of Delaware (Kent, New Castle and Sussex Counties) was designated as a part of the Philadelphia-Wilmington-Atlantic City moderate nonattainment area, and therefore continued to be subject to the CAA RACT requirements. *See* 69 FR 23858, 23931 (April 30, 2004). Delaware revised and promulgated its RACT regulations and demonstrated that it complied with the CAA RACT requirements in a SIP revision approved by EPA on July 23, 2008 (73 FR 42681).

Under CAA section 109(d), EPA is required to periodically review and promulgate, as necessary, the ozone NAAQS to continue to protect human health and the environment. On March 27, 2008, EPA revised the 1997 8-hour ozone standard to a new 0.075 ppm level (73 FR 16436). On May 21, 2012, EPA finalized designations for the 2008 8-hour ozone NAAQS (77 FR 30087).

Under the 2008 8-hour ozone standard, New Castle County of Delaware was designated as a part of the Philadelphia-Wilmington-Atlantic City, PA-NJ-MD-DE marginal nonattainment area, and Sussex County of Delaware was designated as a stand-alone marginal nonattainment area (77 FR 30088). However, due to its location in the OTR, the entire State of Delaware is required to address the CAA RACT requirements for a moderate nonattainment area by submitting to EPA a SIP revision that demonstrates how Delaware meets RACT requirements under the standard. Delaware is required to implement RACT for the 2008 ozone NAAQS on all VOC sources

covered by a CTG issued by EPA, as well as all other major stationary sources located within the State boundaries with the potential to emit 50 or 100 tons per year or more of VOC or NO_x, respectively. Therefore, the RACT requirements under CAA sections 182 and 184 apply to CTG sources, including eleven new CTG that EPA issued between 2006 and 2008, and any other VOC or NO_x sources.

C. EPA Guidance and Requirements

EPA has provided more substantive RACT requirements through final implementation rules for each ozone NAAQS as well as guidance. On March 6, 2015, EPA issued its final rule for implementing the 2008 8-hour ozone NAAQS (the 2008 Ozone Implementation Rule). *See* 80 FR 12264. This rule addressed, among other things, control and planning obligations as they apply to nonattainment areas under the 2008 8-hour ozone NAAQS, including RACT and RACM. In this rule, EPA specifically required that states meet the RACT requirements either through a certification that previously adopted RACT controls in their SIP revisions approved by EPA under a prior ozone NAAQS continue to represent adequate RACT control levels for attainment of the 2008 8-hour ozone NAAQS, or through the adoption of new or more stringent regulations or controls that represent RACT control levels. A certification must be accompanied by appropriate supporting information such as consideration of information received during the public comment period and consideration of new data. Adoption of new RACT regulations will occur when states have new stationary sources not covered by existing RACT regulations, or when new data or technical information indicates that a previously adopted RACT measure does not represent a newly available RACT control level. Additionally, states are required to submit a

negative declaration if there are no CTG major sources of VOC and NO_x emissions within the nonattainment area in lieu of, or in addition to, a certification.

II. Summary of SIP Revision

On May 4, 2015 Delaware submitted a SIP revision to address all the requirements of RACT set forth by the CAA under the 2008 8-hour ozone NAAQS (the 2015 RACT Submission).

Specifically, Delaware's 2015 RACT Submission includes: (1) A certification that for certain categories of sources previously adopted NO_x and VOC RACT controls in Delaware's SIP that were approved by EPA under the 1979 1-hour and 1997 8-hour ozone NAAQS are based on the currently available technically and economically feasible controls, and continue to represent RACT for implementation of the 2008 8-hour ozone NAAQS; (2) the adoption of new or more stringent regulations or controls that represent RACT control levels for certain categories of sources; and (3) a negative declaration that certain CTG or non-CTG major sources of VOC and NO_x sources do not exist in Delaware.

A. VOC RACT Controls

Delaware Air Pollution Control Regulation No. 1124 (formerly Regulation 24) contains Delaware's VOC RACT controls regulations for all VOC sources greater than 50 tpy that were implemented and approved into the Delaware SIP under the 1-hour and 1997 8-hour ozone NAAQS.³ Delaware is certifying that these regulations, all previously approved by EPA into the

³ EPA notes that Delaware's Regulation 1124 at subsection 1.4 contains a provision that was identified as containing inappropriate exemptions for startup and shutdown as well as containing inappropriate director's discretion provisions in EPA's rulemaking, "State Implementation Plans: Response to Petition for Rulemaking; Restatement and Update of EPA's SSM Policy Applicable to SIPs; Findings of Substantial Inadequacy; and SIP Calls to Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown and Malfunction," (EPA's SSM SIP Call). See 80 FR 33839 (June 12, 2015). EPA provides analysis of the interplay and effects of the EPA's SSM SIP Call and Regulation 1124, subsection 1.4 on this proposed rulemaking in Section III of this rulemaking action.

SIP, continue to meet the RACT requirements for the 2008 8-hour ozone NAAQS for major stationary sources and CTG covered sources of VOCs. In addition, since EPA's approval of Delaware's 1997 8-hour ozone RACT SIP revision (73 FR 42681, July 23, 2008), the following sections in Regulation 1124 have been updated to meet the requirements of EPA's CTGs: Sections 11, 12, 13, 16, 19, 20, 22, 23, 37 and 45. All these revisions have been previously approved into Delaware's SIP and meet the requirements of EPA's CTGs issued up to and including July 20, 2014. Since EPA's approval of Delaware's 1997 8-hour ozone NAAQS RACT SIP revision, Delaware adopted and EPA approved for the Delaware SIP, three new provisions or regulations to meet RACT requirements. These are 1) Regulation 1124, Section 8, Handling, Storage, and Disposal of VOCs, 2) Regulation 1124, Section 46, Crude Oil Lightering Operations, and 3) Regulation 1141, section 4, Adhesives and Sealants. More detailed information on these provisions as well as a detailed summary of EPA's review can be found in the Technical Support Document (TSD) for this action which is available on line at www.regulations.gov, Docket number EPA-R03-OAR-2015-0656.

Delaware also submitted a negative declaration that the following VOC CTG source categories do not exist in Delaware: manufacture of pneumatic rubber tires; wood furniture manufacturing operations; shipbuilding and ship repair operations (surface coating); and fiberglass boat manufacturing materials.

Delaware's 2015 RACT Submission also discusses Regulation 1141, Section 1.0, Architectural and Industrial Maintenance Coatings and Regulation 1141, Section 2.0, Consumer Products. These regulations, both previously approved by EPA into the Delaware SIP, establish VOC content limits in various coating materials and consumer products. Although these rules will

assist Delaware in its efforts to attain the ozone standard, they are “beyond RACT” levels as they apply to non-major stationary sources.

B. NO_x RACT Controls

Delaware’s 2015 RACT Submission asserts that Delaware Air Pollution Control Regulation No. 1112 (formerly Regulation 12) contains Delaware’s NO_x RACT controls that were implemented and approved into the Delaware SIP under the 1-hour and the 1997 8-hour ozone NAAQS.

Regulation 1112 has been in effect since 1993 and was approved by EPA as RACT under the 1997 8-hour ozone standard for major stationary sources of NO_x. 66 FR 32231 (June 14, 2001). In Regulation 1112, Delaware’s NO_x RACT controls are specified by source groups such as fuel burning equipment based on heat input capacity, gas turbines and stationary internal combustion engines. In the 2015 RACT Submission, Delaware is certifying that Regulation 1112 continues to represent the lowest emission limits based on currently available and economically feasible control technology for the source categories and, therefore, meets the RACT requirements for the 2008 8-hour ozone NAAQS for major stationary source NO_x controls as required by CAA sections 182(b)(2), 182(f), and 184(b)(2). The details of Regulation 1112 are contained in the TSD prepared for this rulemaking.

Delaware’s Regulation 1112 provides presumptive NO_x limits for major stationary sources of NO_x but also provides for a case-by-case RACT determination process. For case-by-case determinations under Regulation 1112, three (3) stationary sources which previously received NO_x RACT determinations in Delaware’s SIP have been shutdown and Delaware has requested EPA remove these RACT determinations from the SIP. These shutdown sources are 1) General Chemical Corporation facility’s sulfuric acid and inter-stage absorption system, 2) General

Chemical Corporation facility's metallic nitrite process, and 3) SPI Polyols, Incorporated facility's Polyhydrate Alcohol Catalyst Regenerative process. Delaware requests that these three NO_x RACT determinations be removed from Delaware's SIP as the sources of NO_x are permanently closed. The remaining case by case RACT determination for CitiSteel USA, Incorporated, Electric Arc Furnace (EAF) rated at 150 tons per charge was approved by EPA as RACT for the 1997 ozone NAAQS (73 FR 42681), and Delaware states that the case-by-case NO_x RACT determination continues to represent RACT level control for this source. Pursuant to Delaware's case by case authority in Regulation 1112, Delaware also proposes new limits as RACT for two units at the Delaware City Refinery, including the fluid-coking unit (FCU) and the fluid-catalytic-cracking unit (FCCU).⁴

In addition, in the 2015 RACT Submission, Delaware states it has implemented specific NO_x controls in other regulations to tighten requirements for relevant subgroups contained in Regulation 1112. Delaware asserts Regulations 1142, 1144, 1146, and 1148 contain additional NO_x controls that have been implemented and previously approved into the Delaware SIP.⁵ Delaware states that these regulations in conjunction with the requirements from Regulation 1112 meet the RACT requirements for the 2008 8-hour ozone NAAQS for these source categories. These source categories are industrial boilers, industrial boilers and heat processors at petroleum refineries, stationary generators, electric generating units (EGU), and combustion turbines. Regulations 1112, 1142, 1144, 1146 and 1148 all establish applicability, exemptions, definitions, and emission standards as well as requirements for compliance, monitoring,

⁴ Limits are federally enforceable via a consent decree between EPA, Delaware and Delaware City Refinery Company. *See* United States of America, et al., v. Motiva Enterprises LLC, No. H-01-0978.

⁵ EPA notes that Delaware's Regulation 1142 at subsection 2.3.1.6 contains a provision that was identified as containing inappropriate exemptions for startup and shutdown as well as containing an inappropriate director's discretion provision in EPA's SSM SIP call. 80 FR 33839. EPA provides analysis of the interplay and effect of EPA's SSM SIP Call and Regulation 1142, subsection 2.3.1.6 on this proposed rulemaking in Section III of this rulemaking action.

recordkeeping and reporting for their respective sources. Further details of Delaware's NO_x RACT determination in the 2015 RACT Submission for the 2008 8-hour ozone NAAQS can be found in the TSD prepared for this rulemaking. Delaware also submitted a negative declaration for cement kilns as a major source category of NO_x emissions that does not exist in Delaware.

III. EPA's Evaluation of Delaware's SIP Revision

A. RACT

EPA has reviewed Delaware's 2015 RACT Submission and finds Delaware's certification of the RACT regulations for major sources of VOC and NO_x previously approved by EPA for the 1-hour and 1997 8-hour ozone NAAQS continue to represent RACT control level for the source categories.⁶ EPA also finds that Delaware's SIP implements RACT with respect to all sources of VOCs covered by a CTG issued prior to July 20, 2014 and all major stationary sources of VOC and NO_x covered by Delaware's regulations and case-by-case RACT. EPA accepts Delaware's negative declarations for VOC sources as there are no applicable sources of cement kilns in the State. EPA finds that Delaware's major stationary source VOC and NO_x regulations represent the lowest emission limits based on currently available and economically feasible control technology for these source categories. EPA's review of this material indicates that Delaware's 2015 RACT Submission meets the RACT requirements for the 2008 8-hour ozone NAAQS for applicable CTG source categories and major stationary sources of VOC and NO_x to address sections 182(b), 182(f) and 184(b)(2) of the CAA.

⁶ As noted above, two of Delaware's regulations which Delaware relies upon as RACT for the 2008 ozone NAAQS were involved in EPA's SSM SIP Call, Delaware's Regulation 1142 (subsection 1.4) and Regulation 1142 (subsection 2.3.1.6). These regulations contain provisions that were identified as containing inappropriate exemptions for startup and shutdown as well as containing inappropriate director's discretion provisions in EPA's SSM SIP call. 80 FR 33839. EPA's analysis of the impact and effect of EPA's SSM SIP Call and Regulations 1124 (subsection 1.4) and 1142 (subsection 2.3.1.6) on this proposed rulemaking is provided in this Section III of this rulemaking action.

With respect to the previous case by case RACT determinations submitted by Delaware and approved by EPA for the Delaware SIP, the CAA section 110(l) states “The Administrator shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress (RFP) or any applicable requirement of the CAA.” EPA finds that the removal of the emission limits for 1) the Polyhydrate Alcohol Catalyst Regenerative process SPI Polyols, Incorporated, 2) the sulfuric acid process and inter-stage absorption system at General Chemical Corporation and 3) the metallic nitrite process at General Chemical Corporation from the Delaware SIP will not interfere with attainment of any NAAQS or with RFP or any applicable requirement of the CAA because these sources have permanently shutdown and thus emissions have been completely eliminated. EPA finds the NO_x RACT determination for CitiSteel USA, Incorporated, Electric Arc Furnace (EAF) continues to represent the lowest emission limitation that is reasonably available considering technological and economic feasibility for this source. With respect to the FCU and FCCU at the Delaware City Refinery Company, EPA finds that the emission limits, compliance requirements and recordkeeping and reporting requirements established by Delaware represent RACT level of control for these units. Further details of EPA’s review and rationale for proposing to approve these SIP revisions can be found in the TSD prepared for this rulemaking.

B. RACT and the EPA Startup, Shutdown, and Maintenance (SSM) SIP Call

In the 2015 RACT Submission, Delaware is certifying that Regulation 1124, Control of Volatile Organic Compound Emissions, and Regulation 1142, Control of Nitrogen Oxide Emissions from Industrial Boilers and Process Heaters at Petroleum Refineries, contain RACT levels of control for meeting the 2008 8-hour ozone NAAQS requirements for certain major sources of NO_x and

VOC. On May 22, 2015, the EPA Administrator signed a final action, EPA's SSM SIP Call (formally, the "State Implementation Plans: Response to Petition for Rulemaking; Restatement and Update of EPA's SSM Policy Applicable to SIPs; Findings of Substantial Inadequacy; and SIP Calls to Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown and Malfunction"). 80 FR 33839. With regard to the Delaware SIP, seven Delaware regulations including Regulation 1124, Control of Volatile Organic Compound Emissions, section 1.4; and Regulation 1142, Control of Nitrogen Oxide Emissions from Industrial Boilers and Process Heaters at Petroleum Refineries, section 2.3.1.6 were cited as giving the State discretion to create exemptions allowing excess emissions during startup and shutdown and were thus inconsistent with EPA policy as expressed in the EPA's SSM SIP Call and the requirements of the CAA. Delaware's 2015 RACT Submission was sent to EPA on May 4, 2015, prior to promulgation of EPA's SSM SIP Call.

In 2016, Delaware revised Regulations 1124 and 1142, with a State effective date of January 11, 2017, to remove the provisions identified by EPA in EPA's SSM SIP Call as being substantially inadequate and inconsistent with the CAA. Subsequently, on November 21, 2016, Delaware submitted a SIP revision to address EPA's SSM SIP Call for six of the seven Delaware regulations mentioned in the SSM SIP Call, including the portions affecting Regulation 1124 (subsection 1.4) and Regulation 1142 (subsection 2.3.1.6). Delaware's November 21, 2016 SSM SIP revision will be dealt with in a separate rulemaking action.

Challenges to EPA's SSM SIP Call are now pending before the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit), in consolidated Case No. 15-1239 captioned *Environmental Committee of the Florida Electric Power Coordinating Group, Inc. v. EPA*

(consolidated). Within the context of that litigation, the EPA has informed the D.C. Circuit that “EPA intends to closely review the SSM Action, and the prior positions taken by the Agency with respect to the SSM Action may not necessarily reflect its ultimate conclusions after that review is complete.” Case No. 15-1239, Document #1671681 (available in the docket for this rulemaking action). In a July 24, 2017 Status Report, EPA again told the D.C. Circuit that it “is continuing to review the SSM Action to determine whether the Agency will reconsider all or part of the SSM Action, and/or grant the State of Texas’ administrative petition for reconsideration in whole or in part.” Because our review of the Delaware 2015 RACT Submission necessarily includes our review of two regulations, Regulation 1124 and 1142, which are directly impacted by the SSM SIP Call, EPA would therefore necessarily have to apply the substance of the SSM SIP Call which (1) is currently the subject of litigation in the D.C. Circuit and (2) is under review by the EPA with the result of that review uncertain either in terms of the substance or the date it will conclude. EPA is still actively reviewing the SSM SIP Call. Therefore, EPA is proposing to approve the 2015 RACT Submission under two alternative bases. EPA plans to take final action on the 2015 RACT Submission adopting the basis that is consistent with the Agency’s final position on the SSM SIP Call along with appropriate consideration of public comments received.

One alternative basis for EPA’s proposed approval of Delaware’s 2015 RACT Submission assumes that EPA will change its position and related SSM Guidance outlined in the SSM SIP Call in such a way that EPA would withdraw the SSM SIP Call as to Delaware Regulations 1124 and 1142.⁷ Based on this assumed EPA withdrawal of Delaware’s portion of the EPA’s SSM

⁷ This alternative basis for proposed approval assumes that EPA has changed its SSM Guidance and withdrawn the SSM SIP Call as to Delaware Regulations 1124 and 1142. However, neither of those actions are being effectuated here. Therefore, EPA does not consider those issues open for public comment as part of this rulemaking action. Any comments filed on this rulemaking that relate to the possibility of EPA changing the SSM Guidance generally or a possible withdrawal of EPA’s SSM SIP Call as to Delaware Regulations 1124 and 1142 will be considered outside

SIP Call, EPA proposes to find that Delaware's 2015 RACT Submission, including Delaware's Regulations 1124 and 1142 as presently included in the Delaware SIP, is fully consistent with Clean Air Act requirements.

Under the other alternative rationale, EPA assumes that EPA's position (and related guidance) outlined in the SSM SIP Call will not change in such a way that EPA would withdraw the SSM SIP Call as to Delaware Regulations 1124 and 1142. Accordingly, EPA is proposing to approve the 2015 RACT Submission as addressing RACT requirements for the 2008 ozone NAAQS because EPA intends to propose approval and take final rulemaking action approving the revised versions of Regulations 1124 and 1142 as revised in Delaware's response to the SSM SIP Call. This basis for proposed approval of the 2015 RACT Submission is based upon EPA approving Delaware's revisions to Regulations 1124 and 1142 prior to finalizing our action on the 2015 RACT Submission.⁸ By taking such final rulemaking action approving the versions of Regulations 1124 and 1142 prior to EPA taking final rulemaking action on this 2015 RACT Submission, the regulations Delaware relies upon for NO_x and VOC RACT would no longer include any provisions identified in EPA's SSM SIP Call.

EPA is taking public comment on our proposed alternatives discussed herein for approval for Delaware's 2015 RACT Submission for the NO_x and VOC RACT for 2008 ozone NAAQS.

IV. Proposed Action

the scope of this rulemaking, which is limited to EPA's proposed action on Delaware's 2015 RACT Submission.

⁸ However, EPA notes that we cannot prejudge a final approval on the SSM SIP Call submission. If EPA were to change direction based on comments received on proposed rulemaking to approve that SIP submission, we would not be able to approve the SSM SIP Call submission, and therefore we would not be able to give final approval to the 2015 RACT Submission.

EPA is proposing to approve Delaware's 2015 RACT Submission on the basis that Delaware has met the RACT requirements under the 2008 8-hour ozone NAAQS per sections 182(b), 182(f) and 184(b)(2) for the reasons explained in this notice, including our position relating to the SSM SIP Call and the related provisions within Regulations 1124 and 1142 presently in the Delaware SIP. EPA finds that Delaware's 2015 RACT Submission demonstrates that the State has adopted air pollution control strategies that represent RACT for the purposes of compliance with the 2008 8-hour ozone standard for all major stationary sources of VOC and NO_x. EPA finds that Delaware's SIP implements RACT with respect to all sources of VOCs covered by a CTG issued prior to July 20, 2014 as well as represents RACT for all CTG VOC and NO_x major stationary sources of. EPA is proposing to approve source specific NO_x RACT determinations for two (2) units at the Delaware City Refinery Company. EPA is proposing to remove, in accordance with section 110 of the CAA, three (3) source specific NO_x RACT determinations for prior ozone NAAQS from Delaware's SIP as the three processes at both facilities have permanently shutdown - one determination for SPI Polyols, Incorporated and two determinations for General Chemical Corporation. Delaware's SIP revision is based on a combination of (1) certification that for certain categories of sources previously adopted RACT controls in Delaware's SIP that were approved by EPA under the 1-hour ozone NAAQS and 1997 8-hour ozone NAAQS are based on currently available technically and economically feasible controls, and that they continue to represent RACT for the 2008 8-hour standard implementation purposes; (2) the adoption of new or more stringent regulations or controls into the Delaware SIP that represent RACT control levels for certain categories of sources; and (3) the negative declaration that certain CTG or other major sources of VOC and NO_x emissions do not exist within Delaware. EPA is soliciting public comments on the issues discussed in this document relevant to RACT

requirements for Delaware for the 2008 ozone NAAQS. These comments will be considered before taking final action.

V. Incorporation by Reference

In this proposed rule, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference source-specific RACT determinations under the 2008 8-hour ozone NAAQS for certain major sources of NO_x and VOC emissions. EPA has made, and will continue to make, these materials generally available through <http://www.regulations.gov> and/or at the EPA Region III Office (please contact the person identified in the “For Further Information Contact” section of this preamble for more information).

VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA’s role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);

- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rule, Delaware's 2008 8-hour ozone RACT SIP revision does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401 et seq.

Dated: August 30, 2017.

John Armstead,
Acting Regional Administrator,
Region III.

[FR Doc. 2017-19215 Filed: 9/11/2017 8:45 am; Publication Date: 9/12/2017]